

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

CHRISTINE WELLMAN, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 1:19-00094

STRYKER CORPORATION, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiffs' agreed motion for leave to amend their second amended complaint. (ECF No. 5). In the amended complaint, plaintiffs seek to add the proper defendant in this case, Howmedica Osteonics Corporation, and remove the other defendants who are not properly named as defendants herein. Defendants are in agreement with plaintiffs' motion.

Rule 15(a) of the Federal Rules of Civil Procedure permits a party to amend its pleading "once as a matter of course" at any time before a responsive pleading is served. "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Id. In Foman v. Davis, 371 U.S. 178, 182 (1962), the United States Supreme Court noted that amendment under Rule 15(a) should be freely given absent "undue delay, bad faith or dilatory motive on the part of

the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc."

After a review of the record, the court concludes that there has been no undue delay, bad faith, or dilatory motive on the part of the plaintiffs in filing the motion to amend. Furthermore, defendant would not suffer undue prejudice nor is it clear such an amendment would be futile. Therefore, plaintiffs have established that they are entitled under Rule 15 to amend the complaint. Accordingly, the motion to amend is **GRANTED** and the Clerk is directed to file the second amended complaint (attached to the motion to amend). Insofar as the motion seeks an extension of the deadline to file a responsive pleading, it is also **GRANTED** and the deadlines are extended based upon the agreement of the parties.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

IT IS SO ORDERED this 13th day of May, 2019.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge